

D-750

BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi Chambers, M.G Road, Bengaluru – 560 001

**Present: B.N.Krishnaiah
Electricity Ombudsman**

Case No.OMB/H/247/2016

Dated 10.08.2016

Between :

Sutaria Auto Service Centre,
C/o Tushar M.Baddi
Near SBI, keshwapur,
Hubballi

... Appellant

(By Sri Tushar M.Baddi, Authorised Representative)

Vs

1. The Assistant Executive Engineer (EI)
O & M sub-division-3, HESCOM
Industrial Estate, Gokul Road,
Hubballi.

2. The Chairperson, CGRF,
Dharwar District, HESCOM,
Office of the Superintending Engineer,
O&M Circle, HESCOM, Tabibland,
Hubballi

... Respondents

(R-1 by Sri H.V.Devaraj, Advocate).

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, HESCOM, Hubli, (here in after referred to as the 2nd Respondent) dated 14.01.2016.

2. Comments were called vide letter dated 02.02.2016 from the respondent AEE and the Advocate has filed the statement of objections on 25.02.2016.

3. Both the appellants and the 1st respondent were informed vide letter dated 02.05.2016 regarding availability of sub-section 20(1) of KERC (CGRF & Ombudsman) Regulations, 2004, which both the parties have not availed. Hence, this Authority proceeds to pass orders on merits of the case.

4. The contentions and prayer of the appellant is as follows :

The appellant states that the appellant's installation was connected with 60 KV capacity and was charged HT category. The appellant has alleged the PF penalty at Rs.60,462-00 imposed on him without giving notice of 3 months time. Further, he has pleaded as follows :

- (a) to set aside the impugned order of CGRF, HESCOM, Hubli;
- (b) to direct the respondent to withdraw and refund the disputed P.F. penalty demanded contrary to KERC Condition of Supply Reg. 22.02 (a);
- (c) to direct the respondent to award Bank interest from the inception of first penalty i.e. July 2009 to March 2014 till the date of refunding the disputed amount;
- (d) to direct the respondent to strictly comply with the provisions of the Electricity Act and KERC Regulation specified thereunder;
- (e) to direct the Head of HESCOM to take appropriate action against the respondent individual for their wilful disobedience of the Regulations framed;
- (f) to direct the respondent to award compensation as per the Hon'ble Authority deems fit with cost.

5. The respondent has filed his reply and written statement of objections through Advocate. He has contended as follows :

(a) Chapter 4 of Conditions of Supply of electricity of Distribution Licensees in the State of Karnataka deal with power Factor. It is submitted that the Condition 22.01 provide that "it shall be the responsibility of the HT Consumer to determine the capacity of the power factor correction apparatus in consultation with the manufacturers/suppliers of equipments". Condition 22.01 (a) provides that the consumer shall maintain an average of power factor of not less than 0.90 lag in case in case it is not maintain, surcharge shall be payable as specified under tariff schedule form time to time. The average power factor is the ration of KWH to the KVAH consumed during the billing month/period, billing power factor shall be the average power factor recording ETV meter in case the same is not available, the ratio of KWH to KVAH consumed during the billing period and in case of non-availability of the above also the power factor obtained during the rating shall be taken. Condition 22.02 (a) provides that, if during any monthly reading or period or other testing/rating by the licensee, the power factor of the installation is found to be less than 0.90 lag, the consumer shall install additional power factor, correction apparatus as may be necessary to bring the power factor to not less than 0.90 lag within 3 month from the date of intimation, inform the same in writing to the office of the issue, failing which power actor surcharge shall be leviable as specified by the tariff schedule from time to time, from billing month following date of expiry of 3 months till the power factor is brought upto 0.90.

(b) In the present case, the respondent while taking monthly reading, it is found that, the installation of the appellant was less than 0.90 lag as he has failed to maintain an average power factor and therefore, issued a Notices and even after of the 3 months, the appellant has failed to maintain the average power factor of not less than 0.90 lag and therefore, the respondent imposed power factor penalty as per the tariff applicable to the appellant and the same has been reflected in the monthly bills of September 2010 to November 2011, January 2012 to April 2012 and July 2012 to March 2014 and the same has been paid by

the appellant without any demur and therefore, the appellant has knowledge as to the penalty imposed by the respondent and he has paid regularly as and when monthly bills were issued and after lapse of several years, the appellant ought to have not been contend that there is no notice as provided under Condition 22.02 (a).

(c) It is the responsibility/duty of the HT consumer to determine the capacity of the power factor correction and they shall maintain the same, they shall be liable to pay the penalty as specified under the tariff from time to time and thereby, the same have been noticed in the bills and same have been paid by the consumer and after lapse of several years, the consumer cannot raise the grounds to contend that, the respondent has not complied as to issuance of notice to impose power penalty and however, even this case, the respondent issued a Notice on 05.08.2009, 05.09.2010 and subsequently on 14.09.2011 and therefore, the appellant is not entitled for any prayer as prayed in the appeal.

6. Along with the appeal memo, the appellant has produced the copies of the notices 05.08.2009, 05.09.2010 and 14.09.2011 which the AEE has claimed to have been sent to the appellant. Before the CGRF as well as before this Authority, the appellant has contended that the appellant has not received any such notice and these notices are created. The appellant has further submitted that any notice has to be sent as contemplated under Section 171 of the Electricity Act and Regulation 40 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

7. The case was taken up for enquiry and heard in detail. The submissions made orally and in writing by both the appellant and respondent is considered. It is found that matter has not been dealt and proceeded as required under Section 171 of the Electricity Act and Regulation 40 of the

Conditions of Supply of Distribution Licensees in the State of Karnataka.
Hence the following order.

ORDER

Appeal is partly allowed. Order of the CGRF is set aside. The matter is remanded to AEE concerned to examine and pass suitable orders as per relevant norms at the earliest.

Sd/-

(B.N. Krishnaiah)
Electricity Ombudsman

To :

1. Sri Tushar M.Baddi, Near SBI, Keshwapur, Hubballi
2. Sri H.V.Devaraju, Advocate, No.39, Shop No.24, Mazzanine Floor, A.S.V.N.V.Bhavan, K.G.Road, Bengaluru – 560 009.
3. The Assistant Executive Engineer (EI), O & M sub-division-3, HESCOM Industrial Estate, Gokul Road, Hubballi.
4. The Chairperson, CGRF, Dharwar District, HESCOM, Office of the Superintending Engineer, O&M Circle, HESCOM, Tabibland, Hubballi
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. PS to Secretary, KERC
